

6263 C
RECORDATION NO. 6263 C Filed & Recorded

SEP 30 1971 -11 22 AM

INTERSTATE COMMERCE COMMISSION
AMENDMENT OF LEASE dated as of August 15,

1971, between FIRST WESTERN BANK AND TRUST
COMPANY, as Owner-Trustee (hereinafter called
Owner-Trustee), and PULLMAN INCORPORATED, a
Delaware corporation (hereinafter called
Trustee).

WHEREAS the Owner-Trustee and the Trustee have here-
tofore entered into a Lease of Railroad Equipment dated as of
August 1, 1971 (hereinafter called the Original Lease), filed
and recorded with the Interstate Commerce Commission pursuant
to Section 20c of the Interstate Commerce Act on July 30, 1971,
Recordation No. 6263 and deposited with the Registrar General
of Canada.

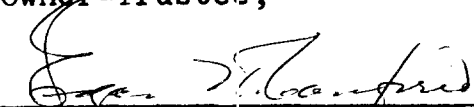
NOW, THEREFORE, in consideration of the mutual agree-
ments herein contained, the parties hereto agree that the
Original Lease be and it hereby is amended so as to read in
its entirety as set forth in Exhibit B hereto.

IN WITNESS WHEREOF, the parties hereto have caused
their names to be signed hereto by their respective officers
thereunto duly authorized and their respective corporate seals,
duly attested, to be hereunto affixed as of the day and year
first written.

INTERSTATE
COMMERCE COMMISSION
FILED
SEP 30 1971
ADMINISTRATIVE SERVICES
S MAIL BRANCH

FIRST WESTERN BANK AND TRUST COMPANY,
as Owner-Trustee,

by


Vice President and Trust
Officer

Attest:

Howard B. M. Ellinger
Assistant Secretary

PULLMAN INCORPORATED,

by John E. Kelley
Vice President

Attest:

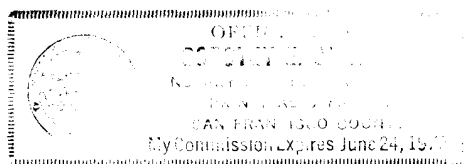
William O. Edridge
Assistant Secretary

STATE OF CALIFORNIA,)
) ss.:
CITY AND COUNTY OF SAN FRANCISCO,)

On this 26 day of August 1971, before me
personally appeared EDGAR E. CANFIELD, to me per-
sonally known, who, being by me duly sworn, said that he
is a Vice President and Trust Officer of FIRST WESTERN
BANK AND TRUST COMPANY, that one of the seals affixed to
the foregoing instrument is the corporate seal of said
Corporation, that said instrument was signed and sealed
on behalf of said Corporation by authority of its Board
of Directors, and he acknowledged that the execution of
the foregoing instrument was the free act and deed of
said Corporation.

W. E. Samson
Notary Public

My commission expires:



STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 27th day of August 1971, before me personally appeared John F. Kelley, to me personally known, who, being by me duly sworn, said that he is a Vice President of PULLMAN INCORPORATED, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

James F. Reay
Notary Public

My commission expires: Feb. 24, 1974

6263 C
RECORDATION NO. Filed & Recorded

SEP 30 1971 - 11 20 AM

INTERSTATE COMMERCE COMMISSION

EXHIBIT B

LEASE OF RAILROAD EQUIPMENT

DATED AS OF AUGUST 1, 1971

By and Between

FIRST WESTERN BANK AND TRUST COMPANY,
as Owner-Trustee,
Lessor

and

PULLMAN INCORPORATED,
Lessee

[Covering 1,251 Covered Hopper Cars]

LEASE OF RAILROAD EQUIPMENT, dated as of August 1, 1971, between FIRST WESTERN BANK AND TRUST COMPANY, a California banking corporation, as Owner-Trustee, under a Trust Agreement (hereinafter called the "Trust Agreement" and said Owner-Trustee being hereinafter called "Lessor"), dated as of August 1, 1971, with The Northern Trust Company and PULLMAN INCORPORATED, a Delaware corporation (hereinafter called "Lessee" or "Manufacturer").

WHEREAS, Lessor has entered into an Equipment Trust Agreement dated as of August 1, 1971 (hereinafter called the "Equipment Trust Agreement") with United States Trust Company of New York, as Trustee (hereinafter called the "Trustee"), under which Lessor has agreed to cause to be sold, assigned and transferred to the Trustee security title to all the covered hopper cars (hereinafter called the "Cars") described in Annex A thereto and under which security title to the Cars will be reserved to the Trustee until Lessor fulfills all its obligations under the Equipment Trust Agreement;

WHEREAS, Lessee desires to lease from Lessor all the Cars as are delivered and accepted and settled for under the Equipment Trust Agreement on or prior to April 1, 1972, at the rentals and for the terms and upon the conditions, hereinafter provided;

WHEREAS, Lessee will sublease the Cars to the Trustees of the Property of the Penn Central Transportation Company, Debtor (hereinafter called "Sublessee"), pursuant to a Lease of Railroad Equipment dated as of April 21, 1971 (hereinafter called the "Sublease");

NOW, THEREFORE, in consideration of the promises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby leases the Cars to Lessee upon the following terms and conditions, but subject and subordinate to all the rights and remedies of the Trustee under the Equipment Trust Agreement.

SECTION 1. *Delivery and Acceptance of Cars.* During the manufacture of each Car Lessee will cause the materials and other components which are to be incorporated in, and used in the construction of,

such Car to be inspected by its authorized representative at Manufacturer's Butler, Pennsylvania plant. Promptly after completion of manufacture thereof Lessor will require Manufacturer to cause such Car to be tendered to Lessor and, on behalf of Lessor, to Lessee at said plant. Upon such tender Lessee will forthwith cause such Car to be further inspected by the authorized representative referred to above and, if such Car complies fully with the specifications and is in good order and ready for service, Lessee will cause such representative to execute and deliver to Lessor and to Manufacturer a certificate of inspection and a Certificate of Inspection and Acceptance of an authorized representative of Sublessee as contemplated by the Sublease, whereupon such Car shall be deemed to have been delivered to and accepted by Lessee, and shall be subject thereafter to all the terms and conditions of this Lease.

At all times during the continuance of this Lease title to the Cars shall be vested in Lessor to the exclusion of Lessee and Sublessee, and any rights of Lessee and Sublessee in respect of the Cars shall constitute a leasehold interest only.

Any of the Cars not delivered by Manufacturer to Lessor and accepted by Lessee and Sublessee on or before April 1, 1972, shall be excluded from this Lease and this Lease shall not be effective as to any Cars not so delivered and accepted.

SECTION 2. *Term of the Lease.* The initial term of this Lease, (hereinafter called the "Initial Term"), as to each Car shall commence on the date of delivery to Lessee specified in the certificate of inspection for such Car and, subject to the provisions of Sections 9 and 11 hereof, shall terminate on the day, (hereinafter called the "Initial Term Terminal Day"), preceding the fifteenth anniversary of the Average Date of Acceptance, as hereinafter defined in this Section 2. The term of this Lease shall expire on the Initial Term Terminal Day unless Lessee exercises either or both of its rights and options to extend the term of this Lease as hereinafter provided in this Section 2.

Unless an Event of Default under Section 11 hereof shall have occurred and be continuing, Lessee shall have the right and option, by written notice given to Lessor not less than ninety (90) days prior to the Initial Term Terminal Day, to extend, subject to the provisions of Section 9 hereof, the term of this Lease with respect to the Cars then subject to this Lease for an additional period of five (5) years, (hereinafter called the "First Extended Term"), commencing on the fifteenth anniversary of the Average Date of Acceptance, as hereinafter defined in this Section 2, and ending on the day, (hereinafter called the "First Extended Term Terminal Day"), preceding the twentieth anniversary of the Average Date of Acceptance, as hereinafter defined in this Section 2.

Unless an Event of Default under Section 11 hereof shall have occurred and be continuing, Lessee shall have the right and option, by written notice given to Lessor not less than ninety (90) days prior to the First Extended Term Terminal Day, to further extend, subject to the provisions of Section 9 hereof, the term of this Lease with respect to the Cars then subject to this Lease for an additional period of five (5) years, (hereinafter called the "Second Extended Term"), commencing on the twentieth anniversary of the Average Date of Acceptance, as hereinafter defined in this Section 2, and ending on the day, (hereinafter called the "Second Extended Term Terminal Day"), preceding the twenty-fifth anniversary of the Average Date of Acceptance, as hereinafter defined in this Section 2.

In the event that Sublessee exercises either or both of its rights and options to extend the term of the Sublease, the Lessee shall exercise its corresponding right and option hereunder to extend the term of the Lease.

From and after the date of execution hereof until the expiration or termination of the Initial Term or any extension thereof, as to any Car as set forth in this Section, this Lease shall not be subject to termination by Lessor except pursuant to Section 11 hereof upon the occurrence of an Event of Default, or by Lessee except pursuant to Section 9 hereof.

For the purposes of this Lease, the "Average Date of Acceptance" shall be the first day of the calendar month next succeeding a date

determined as follows: the number of Cars accepted by Lessee on each date of acceptance on or prior to April 1, 1972 shall in each case be multiplied by the number of days elapsed subsequent to the date of the acceptance of the first Car accepted; the products so obtained shall be added together and divided by the total number of Cars so accepted; and the quotient so obtained (rounded out to the nearest whole number) will be the number of days elapsed subsequent to the date of the acceptance of the first Car to and including the date which is the Average Date of Acceptance; *provided, however*, that the Average Date of Acceptance may be such other date as shall be agreed upon in writing by the Trustee, Lessor and Lessee.

Lessee shall deliver to the Trustee as promptly as possible a Lessee's Certificate (as defined in the Equipment Trust Agreement) setting forth the date of the Average Date of Acceptance as determined according to the next preceding paragraph. If the Lessee's Certificate is not so delivered within ten business days after the Cut-Off Date (as defined in the Equipment Trust Agreement), the Average Date of Acceptance shall be deemed to be December 1, 1971.

SECTION 3. *Rentals.* Lessee agrees to pay to Lessor, in cash, for the Initial Term of this Lease rental for each of the Cars subject to this Lease at the monthly rate specified for such type of Car in Exhibit A hereof. Such rental shall begin to accrue on the date on which such Car is delivered to and accepted by Lessee hereunder and continuing during the period ending on the earlier of (i) the Initial Term Terminal Day or (ii) the date, if any, on which this Lease shall terminate with respect to such Car pursuant to Section 9 or Section 11 hereof. The Lessee shall also pay to the Lessor as additional rental on the first day of each calendar month, such amounts, if any, when added to the rentals paid, if any, on such date as aforesaid, as will equal all payments due and payable to the Trustee pursuant to the Equipment Trust Agreement (without giving effect to any acceleration of the principal payments under the Equipment Trust Agreement due to an Event of Default [as defined in the Equipment Trust Agreement] not attributable to the Lessee), other than payments due and payable under Sections 3.03,

4.04(1) and 8.05 of the Equipment Trust Agreement. Lessor and Lessee further agree that any Investments (as defined in the Equipment Trust Agreement) will be made only at the direction of Lessee and (i) Lessor shall pay over to Lessee any amounts received by it pursuant to the last paragraph of Section 8.04 of the Equipment Trust Agreement; and (ii) Lessee will pay to Lessor as additional rental all amounts required to be paid by Lessor pursuant to Section 4.04(1)(b) of the Equipment Trust Agreement whether or not any of the Cars have been delivered hereunder.

In the event that Lessee exercises its first right and option to extend the term of this Lease, Lessee agrees to pay to Lessor, in cash, during the First Extended Term rental for each of the Cars then subject to this Lease at the monthly rate specified for such type of Car in Exhibit A hereof beginning on the fifteenth anniversary of the Average Date of Acceptance and ending on the earlier of (i) the First Extended Term Terminal Day or (ii) the date, if any, on which this Lease shall terminate with respect to such Car pursuant to Section 9 or Section 11 hereof.

In the event that Lessee exercises its second right and option to further extend the term of this Lease, Lessee agrees to pay to Lessor, in cash, during the Second Extended Term rental for each of the Cars then subject to this Lease equal to the Fair Rental Value, as hereinafter defined in this Section 3, of such Car on the twentieth anniversary of the Average Date of Acceptance beginning on such twentieth anniversary and ending on the earlier of (i) the Second Extended Term Terminal Day or (ii) the date, if any, on which this Lease shall terminate with respect to such Car pursuant to Section 9 or Section 11 hereof.

If on or before two months prior to the expiration of the First Extended Term of this Lease, Lessor and Lessee are unable to agree upon a determination of the Fair Rental Value of such Cars, the Fair Rental Value shall be determined by an independent appraiser mutually agreed upon by Lessor and Lessee, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first

two so selected. The appraiser or appraisers shall be instructed to make such determination within a period of thirty days following appointment and shall promptly communicate such determination in writing to Lessor and Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the appraiser or appraisers shall be borne by Lessee.

Fair Rental Value shall mean at any time for the determination thereof an amount determined on the basis of, and equal to, the value which would obtain in an arms'-length transaction between an informed and willing lessee-user (other than a lessee-user currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

Lessee agrees to pay the rentals set forth in Exhibit A hereto (or the Fair Rental Value) to Lessor as follows: for the calendar month during which a Car is delivered and accepted a daily pro rata rental rate for such Car will be payable from the date of acceptance through the last day of that month on or before the 10th day of the following month and the rental for each succeeding month will be payable on the first business day of the calendar month next succeeding the calendar month in which the rental accrued.

Lessee will pay, to the extent legally enforceable, interest at the rate of $10\frac{1}{2}\%$ per annum upon rentals remaining unpaid after the same shall have become due and payable under any of the provisions of this Lease.

This Lease is a net lease and Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of Lessee against Lessor under this Lease or otherwise or against the Trustee; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Cars from whatsoever cause, the prohibition of or other restriction against Les-

(g) The proceeds of any insurance received by Lessor on account of a lost, stolen, destroyed or damaged Car in respect of which Lessee shall have made payment to Lessor pursuant to Section 9 hereof, shall be released to Lessee upon a written application signed by Lessee or a person duly authorized by the Lessee, *provided, however*, that if an Event of Default has occurred and is continuing hereunder, such proceeds may be applied by Lessor against any liability of Lessee to Lessor hereunder.

SECTION 9. *Loss, Theft or Destruction of Car.* In the event any Car is lost or stolen or is destroyed or damaged beyond economic repair from any cause whatsoever during the Initial Term of this Lease, Lessee shall promptly and fully inform Lessor and the Trustee of such occurrence. On the business day next preceding the first day of each month in each year next succeeding such notice (or in the event such payment date shall occur within 15 days after such notice, on the business day preceding the first day of the following month) Lessee shall pay to Lessor, as liquidated damages in lieu of any further claim of Lessor hereunder in respect of such Car, except for such claims as arise or exist under Sections 7 and 8 hereof, an amount equal to the accrued unpaid rental for such Car to such payment date plus a sum equal to the greater of (a) the value thereof as determined pursuant to Section 4.07 of the Equipment Trust Agreement and (b) that percentage of the Cost of such Car as is set forth in the following schedule opposite each payment date:

<u>Payment Date</u>	<u>Percentage of Cost</u>	<u>Payment Date</u>	<u>Percentage of Cost</u>
1	101.33409	11	104.02852
2	101.65044	12	104.23917
3	101.95658	13	104.43881
4	102.25243	14	104.62735
5	102.53790	15	104.80471
6	102.81293	16	104.97080
7	103.07742	17	105.12555
8	103.33131	18	105.26886
9	103.57451	19	105.40065
10	103.80694	20	105.52084

<u>Payment Date</u>	<u>Percentage of Cost</u>	<u>Payment Date</u>	<u>Percentage of Cost</u>
21	105.62933	61	96.13728
22	105.72604	62	95.60435
23	105.81087	63	95.06936
24	105.88375	64	94.93230
25	105.94457	65	93.99315
26	105.99325	66	93.45191
27	106.02971	67	92.90858
28	106.05383	68	92.36313
29	106.07152	69	91.81556
30	106.08531	70	91.26585
31	106.09521	71	90.71400
32	106.10120	72	90.16000
33	106.10328	73	89.60384
34	106.10144	74	89.04550
35	106.09568	75	88.48497
36	106.08598	76	87.92225
37	106.07234	77	87.35732
38	106.05476	78	86.79018
39	106.03322	79	86.22080
40	106.00773	80	85.64919
41	105.59733	81	85.07533
42	105.18108	82	84.49920
43	104.75898	83	83.92080
44	104.33100	84	83.34012
45	103.89713	85	82.75715
46	103.45733	86	82.17187
47	103.01160	87	81.58427
48	102.55992	88	80.99434
49	102.10226	89	80.40207
50	101.63861	90	79.80746
51	101.16895	91	79.21047
52	100.69325	92	78.61111
53	100.21150	93	78.00937
54	99.72369	94	77.40522
55	99.22977	95	76.79867
56	98.72975	96	76.19969
57	98.22360	97	75.57828
58	97.71130	98	74.96442
59	97.19282	99	74.34811
60	96.66815	100	73.72932

<u>Payment Date</u>	<u>Percentage of Cost</u>	<u>Payment Date</u>	<u>Percentage of Cost</u>
101	73.10805	141	46.07099
102	72.48428	142	45.33643
103	71.85801	143	44.59879
104	71.22921	144	43.85808
105	70.59788	145	43.11427
106	69.96401	146	42.36734
107	69.32758	147	41.61729
108	68.68857	148	40.86408
109	68.04699	149	40.10772
110	67.40280	150	39.34818
111	66.75601	151	38.58544
112	66.10659	152	37.81949
113	65.45453	153	37.05032
114	64.79983	154	36.27790
115	64.14247	155	35.50222
116	63.48242	156	34.72327
117	62.81969	157	33.94102
118	62.15426	158	33.15546
119	61.48611	159	32.36657
120	60.81523	160	31.57434
121	60.14160	161	30.77874
122	59.46522	162	29.97977
123	58.78606	163	29.17739
124	58.10412	164	28.37161
125	57.41938	165	27.56239
126	56.73183	166	26.74972
127	56.04145	167	25.93358
128	55.34822	168	25.11396
129	54.65214	169	24.29084
130	53.95319	170	23.46419
131	53.25135	171	22.63401
132	52.54661	172	21.80026
133	51.83896	173	20.96294
134	51.12837	174	20.12203
135	50.41484	175	19.27750
136	49.69836	176	18.42934
137	48.97889	177	17.57752
138	48.25644	178	16.72204
139	47.53098	179	15.86287
140	46.80251	180	15.00000

In the event any Car is lost or stolen or is destroyed or damaged beyond economic repair from any cause whatsoever during either the First Extended Term or the Second Extended Term of this Lease, Lessee shall promptly and fully inform Lessor and the Trustee of such occurrence. On the business day next preceding the first day of each month in each year next succeeding such notice (or in the event such payment shall occur within 15 days after such notice, on the business day preceding the first day of the following month), Lessee shall pay to Lessor, as liquidated damages in lieu of any further claim of Lessor hereunder in respect of such Car, except for accrued rent and such claims as arise or exist under Sections 7 and 8 hereof, an amount equal to the present worth, as hereinafter defined, of the total remaining rental for such Car during such First Extended Term or Second Extended Term, whichever is applicable, plus the Net Scrap Value, as hereinafter defined, for such Car.

The present worth of the total remaining rental for such Car as used in the next preceding paragraph of this Section 9 shall mean an amount equal to such total remaining rental for such Car discounted on a 9% per annum basis compounded monthly from the date of such occurrence to the Terminal Date of the then current Term, as defined in Section 2 hereof.

The Net Scrap Value of each Car shall mean an amount equal to the current quoted price per gross ton of No. 1 Heavy Railroad Melting Steel Scrap, prevailing at Butler, Pennsylvania, as published in Iron Age or other reputable industrial journals, on the first day of the month preceding the month in which payment of such Net Scrap Value is required to be made, multiplied by 26.

This Lease shall continue in full force and effect irrespective of the cause, place or extent of any damage, loss or destruction of any of the Cars, the risk of which shall be borne by Lessee; *provided, however,* that this Lease shall terminate with respect to any Car which is lost, stolen, destroyed or damaged beyond repair on the date Lessor shall receive payment of the amount required to be paid to it on account of such Car under this Section 9.

SECTION 10. *Compliance with Laws and Rules; Indemnification.*

Lessee agrees to comply in all respects with all laws of the jurisdictions in which its operations involving the Cars may extend and with all lawful rules of the Federal Railroad Administration and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over Lessee or over the Cars, to the extent that such laws and rules affect the operation, maintenance or use of the Cars. In the event such laws or rules require the alteration of the Cars, Lessee will conform therewith, at Lessee's expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that Lessee may, in good faith, contest the validity and application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the property or rights of Lessor as owner hereunder or the property or rights of the Trustee.

If Lessee (by any officer, employee or agent thereof) shall make any representation, warranty or statement herein, which shall prove to be fraudulent, untrue, incorrect or inaccurate in whole or in part; or take any action in respect of its income tax returns which shall be inconsistent with, or in contravention of, this transaction; and if Lessor (or The Northern Trust Company, as beneficiary of the trust created by the Trust Agreement) shall thereby lose or not be entitled to claim the Rapid Amortization Deduction (as hereinafter defined in Section 11 hereof) in respect of any Car or Cars, then Lessee shall pay Lessor, as supplemental rent, an amount which, after deduction of all taxes required to be paid by Lessor (or such beneficiary) in respect of the receipt of such supplemental rent, shall be equal to the benefit so lost plus any interest or penalty assessed against Lessor (or such beneficiary) in connection with such loss. Lessor agrees to notify promptly Lessee of any claim made by the Internal Revenue Service with respect to such loss which relates to information which may be particularly within the knowledge of Lessor.

Lessee hereby agrees to indemnify, reimburse and hold Lessor and Trustee harmless from any and all expense, loss, or liability (including but not limited to patent liabilities, penalties and interest) which the Lessor or the Trustee may incur in any manner by reason

of their ownership or security title to the Cars and claims, demands, suits, judgments or causes of action for or on account of injury to or death of persons, or loss or damage to property which may result from or grow in any manner out of the control, use or operation of the Cars under this Lease whether or not in the possession of Lessee, *provided, however*, that Lessee does not assume liability in respect of representatives, agents or employees of the Lessor, and *provided, further, however*, that Lessor will assign or pay over to Lessee any and all claims which it may have against third parties in respect of loss or damage to the Cars if Lessee is not in default under this Lease.

SECTION 11. *Default.* If, during the continuance of this Lease or any extension thereof, one or more of the following events shall occur :

(a) default shall be made in the payment of any part of the rental provided in Section 3 hereof and such default shall continue for seven (7) days after written notice from Lessor to Lessee;

(b) Lessee shall make or suffer any unauthorized assignment or transfer of this Lease or any unauthorized sublease or any unauthorized transfer of possession of the Cars or any of them and shall fail or refuse to cause the same to be cancelled by agreement of all parties having any interest therein and to recover possession of such Car or Cars within thirty (30) days after written notice from Lessor to Lessee demanding such cancellation and recovery of possession;

(c) any Car is requisitioned, taken over or nationalized by any governmental authority under the power of eminent domain or otherwise during the term of this Lease (except by any corporation or governmental agency which acquires the greater portion of the lines of railroad comprised in Sublessee's estate upon termination of the present trusteeship of the property of Sublessee and any successor if, in any case, it (i) shall have assumed all of the obligations of the Sublessee under the Sublease and (ii) such action does not impair the lien of the Trustee on the Equipment) and all of the obligations of Lessee hereunder are not assumed by such governmental authority within sixty (60) days after such nation-

(g) The proceeds of any insurance received by Lessor on account of a lost, stolen, destroyed or damaged Car in respect of which Lessee shall have made payment to Lessor pursuant to Section 9 hereof, shall be released to Lessee upon a written application signed by Lessee or a person duly authorized by the Lessee, *provided, however*, that if an Event of Default has occurred and is continuing hereunder, such proceeds may be applied by Lessor against any liability of Lessee to Lessor hereunder.

SECTION 9. *Loss, Theft or Destruction of Car.* In the event any Car is lost or stolen or is destroyed or damaged beyond economic repair from any cause whatsoever during the Initial Term of this Lease, Lessee shall promptly and fully inform Lessor and the Trustee of such occurrence. On the business day next preceding the first day of each month in each year next succeeding such notice (or in the event such payment date shall occur within 15 days after such notice, on the business day preceding the first day of the following month) Lessee shall pay to Lessor, as liquidated damages in lieu of any further claim of Lessor hereunder in respect of such Car, except for such claims as arise or exist under Sections 7 and 8 hereof, an amount equal to the accrued unpaid rental for such Car to such payment date plus a sum equal to the greater of (a) the value thereof as determined pursuant to Section 4.07 of the Equipment Trust Agreement and (b) that percentage of the Cost of such Car as is set forth in the following schedule opposite each payment date:

<u>Payment Date</u>	<u>Percentage of Cost</u>	<u>Payment Date</u>	<u>Percentage of Cost</u>
1	101.33409	11	104.02852
2	101.65044	12	104.23917
3	101.95658	13	104.43881
4	102.25243	14	104.62735
5	102.53790	15	104.80471
6	102.81293	16	104.97080
7	103.07742	17	105.12555
8	103.33131	18	105.26886
9	103.57451	19	105.40065
10	103.80694	20	105.52084

<u>Payment Date</u>	<u>Percentage of Cost</u>	<u>Payment Date</u>	<u>Percentage of Cost</u>
21	105.62933	61	96.13728
22	105.72604	62	95.60435
23	105.81087	63	95.06936
24	105.88375	64	94.93230
25	105.94457	65	93.99315
26	105.99325	66	93.45191
27	106.02971	67	92.90858
28	106.05383	68	92.36313
29	106.07152	69	91.81556
30	106.08531	70	91.26585
31	106.09521	71	90.71400
32	106.10120	72	90.16000
33	106.10328	73	89.60384
34	106.10144	74	89.04550
35	106.09568	75	88.48497
36	106.08598	76	87.92225
37	106.07234	77	87.35732
38	106.05476	78	86.79018
39	106.03322	79	86.22080
40	106.00773	80	85.64919
41	105.59733	81	85.07533
42	105.18108	82	84.49920
43	104.75898	83	83.92080
44	104.33100	84	83.34012
45	103.89713	85	82.75715
46	103.45733	86	82.17187
47	103.01160	87	81.58427
48	102.55992	88	80.99434
49	102.10226	89	80.40207
50	101.63861	90	79.80746
51	101.16895	91	79.21047
52	100.69325	92	78.61111
53	100.21150	93	78.00937
54	99.72369	94	77.40522
55	99.22977	95	76.79867
56	98.72975	96	76.19969
57	98.22360	97	75.57828
58	97.71130	98	74.96442
59	97.19282	99	74.34811
60	96.66815	100	73.72932

<u>Payment Date</u>	<u>Percentage of Cost</u>	<u>Payment Date</u>	<u>Percentage of Cost</u>
101	73.10805	141	46.07099
102	72.48428	142	45.33643
103	71.85801	143	44.59879
104	71.22921	144	43.85808
105	70.59788	145	43.11427
106	69.96401	146	42.36734
107	69.32758	147	41.61729
108	68.68857	148	40.86408
109	68.04699	149	40.10772
110	67.40280	150	39.34818
111	66.75601	151	38.58544
112	66.10659	152	37.81949
113	65.45453	153	37.05032
114	64.79983	154	36.27790
115	64.14247	155	35.50222
116	63.48242	156	34.72327
117	62.81969	157	33.94102
118	62.15426	158	33.15546
119	61.48611	159	32.36657
120	60.81523	160	31.57434
121	60.14160	161	30.77874
122	59.46522	162	29.97977
123	58.78606	163	29.17739
124	58.10412	164	28.37161
125	57.41938	165	27.56239
126	56.73183	166	26.74972
127	56.04145	167	25.93358
128	55.34822	168	25.11396
129	54.65214	169	24.29084
130	53.95319	170	23.46419
131	53.25135	171	22.63401
132	52.54661	172	21.80026
133	51.83896	173	20.96294
134	51.12837	174	20.12203
135	50.41484	175	19.27750
136	49.69836	176	18.42934
137	48.97889	177	17.57752
138	48.25644	178	16.72204
139	47.53098	179	15.86287
140	46.80251	180	15.00000

In the event any Car is lost or stolen or is destroyed or damaged beyond economic repair from any cause whatsoever during either the First Extended Term or the Second Extended Term of this Lease, Lessee shall promptly and fully inform Lessor and the Trustee of such occurrence. On the business day next preceding the first day of each month in each year next succeeding such notice (or in the event such payment shall occur within 15 days after such notice, on the business day preceding the first day of the following month), Lessee shall pay to Lessor, as liquidated damages in lieu of any further claim of Lessor hereunder in respect of such Car, except for accrued rent and such claims as arise or exist under Sections 7 and 8 hereof, an amount equal to the present worth, as hereinafter defined, of the total remaining rental for such Car during such First Extended Term or Second Extended Term, whichever is applicable, plus the Net Scrap Value, as hereinafter defined, for such Car.

The present worth of the total remaining rental for such Car as used in the next preceding paragraph of this Section 9 shall mean an amount equal to such total remaining rental for such Car discounted on a 9% per annum basis compounded monthly from the date of such occurrence to the Terminal Date of the then current Term, as defined in Section 2 hereof.

The Net Scrap Value of each Car shall mean an amount equal to the current quoted price per gross ton of No. 1 Heavy Railroad Melting Steel Scrap, prevailing at Butler, Pennsylvania, as published in Iron Age or other reputable industrial journals, on the first day of the month preceding the month in which payment of such Net Scrap Value is required to be made, multiplied by 26.

This Lease shall continue in full force and effect irrespective of the cause, place or extent of any damage, loss or destruction of any of the Cars, the risk of which shall be borne by Lessee; *provided, however*, that this Lease shall terminate with respect to any Car which is lost, stolen, destroyed or damaged beyond repair on the date Lessor shall receive payment of the amount required to be paid to it on account of such Car under this Section 9.

SECTION 10. *Compliance with Laws and Rules; Indemnification.*

Lessee agrees to comply in all respects with all laws of the jurisdictions in which its operations involving the Cars may extend and with all lawful rules of the Federal Railroad Administration and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over Lessee or over the Cars, to the extent that such laws and rules affect the operation, maintenance or use of the Cars. In the event such laws or rules require the alteration of the Cars, Lessee will conform therewith, at Lessee's expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that Lessee may, in good faith, contest the validity and application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the property or rights of Lessor as owner hereunder or the property or rights of the Trustee.

If Lessee (by any officer, employee or agent thereof) shall make any representation, warranty or statement herein, which shall prove to be fraudulent, untrue, incorrect or inaccurate in whole or in part; or take any action in respect of its income tax returns which shall be inconsistent with, or in contravention of, this transaction; and if Lessor (or The Northern Trust Company, as beneficiary of the trust created by the Trust Agreement) shall thereby lose or not be entitled to claim the Rapid Amortization Deduction (as hereinafter defined in Section 11 hereof) in respect of any Car or Cars, then Lessee shall pay Lessor, as supplemental rent, an amount which, after deduction of all taxes required to be paid by Lessor (or such beneficiary) in respect of the receipt of such supplemental rent, shall be equal to the benefit so lost plus any interest or penalty assessed against Lessor (or such beneficiary) in connection with such loss. Lessor agrees to notify promptly Lessee of any claim made by the Internal Revenue Service with respect to such loss which relates to information which may be particularly within the knowledge of Lessor.

Lessee hereby agrees to indemnify, reimburse and hold Lessor and Trustee harmless from any and all expense, loss, or liability (including but not limited to patent liabilities, penalties and interest) which the Lessor or the Trustee may incur in any manner by reason

of their ownership or security title to the Cars and claims, demands, suits, judgments or causes of action for or on account of injury to or death of persons, or loss or damage to property which may result from or grow in any manner out of the control, use or operation of the Cars under this Lease whether or not in the possession of Lessee, *provided, however*, that Lessee does not assume liability in respect of representatives, agents or employees of the Lessor, and *provided, further, however*, that Lessor will assign or pay over to Lessee any and all claims which it may have against third parties in respect of loss or damage to the Cars if Lessee is not in default under this Lease.

SECTION 11. *Default.* If, during the continuance of this Lease or any extension thereof, one or more of the following events shall occur :

(a) default shall be made in the payment of any part of the rental provided in Section 3 hereof and such default shall continue for seven (7) days after written notice from Lessor to Lessee;

(b) Lessee shall make or suffer any unauthorized assignment or transfer of this Lease or any unauthorized sublease or any unauthorized transfer of possession of the Cars or any of them and shall fail or refuse to cause the same to be cancelled by agreement of all parties having any interest therein and to recover possession of such Car or Cars within thirty (30) days after written notice from Lessor to Lessee demanding such cancellation and recovery of possession;

(c) any Car is requisitioned, taken over or nationalized by any governmental authority under the power of eminent domain or otherwise during the term of this Lease (except by any corporation or governmental agency which acquires the greater portion of the lines of railroad comprised in Sublessee's estate upon termination of the present trusteeship of the property of Sublessee and any successor if, in any case, it (i) shall have assumed all of the obligations of the Sublessee under the Sublease and (ii) such action does not impair the lien of the Trustee on the Equipment) and all of the obligations of Lessee hereunder are not assumed by such governmental authority within sixty (60) days after such nation-

alization, and in which event, Lessor shall be entitled to the full amount of any award or recovery from such occurrence and Lessee hereby expressly waives any right or claim to any part of such award or recovery as damages or otherwise;

(d) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for thirty (30) days after written notice from Lessor to Lessee specifying the default and demanding the same to be remedied;

(e) any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of Lessee hereunder), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such effectiveness shall continue), and all the obligations of Lessee under this Lease shall not have been duly assumed in writing by a trustee or trustees or receiver or receivers appointed for Lessee or for its property in connection with any such proceedings or otherwise given the same status as obligations assumed by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment; if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) any representation or warranty of the Lessee contained herein, in the Purchase Agreement (as defined in the Equipment Trust Agreement), or in any document or certificate furnished to the Trustee, any of the Purchasers (as defined in the Equipment Trust Agreement) or the Lessor pursuant hereto or thereto shall be false or incorrect in any material respect on the date as of which made;

then, in any such case (herein sometimes called Events of Default), Lessor, at its option, may

(1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the appli-

cable covenants of this Lease or to recover damages for the breach thereof; or

(2) by notice in writing to Lessee terminate this Lease, whereupon all right of Lessee to the use of the Cars shall absolutely cease and determine as though this Lease had never been made, but Lessee shall remain liable as herein provided; and thereupon Lessee shall deliver possession of the Cars to Lessor in accordance with Section 15 hereof unless such delivery is impossible because the Cars or any portion thereof were requisitioned, taken over or nationalized as described in paragraph (c) of this Section 11 and Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Cars may be and take possession of all or any of such Cars (damages occasioned by such taking of possession are hereby expressly waived by Lessee) and thenceforth hold, possess and enjoy the same free from any right of Lessee, or Lessee's successors or assigns or sublessees, to use the Cars for any purpose whatever; but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may become due and unpaid for the use of the Cars (including rentals accruing on the Cars after the date of default); and also to recover forthwith from Lessee (to the extent not recovered pursuant to the foregoing) the following:

(i) as damages for loss of the bargain and not as a penalty, a sum, with respect to Cars whose term has not expired, which represents the excess of the present worth, at the time of such termination, of the aggregate of the rentals for the Cars which would otherwise have accrued hereunder from the date of such termination to the Terminal Day of the then current term over the then present worth of the Fair Rental Value of such Cars for such period; plus interest on such excess at the rate of 10% per annum commencing on the date of such notice. Such present worths are to be computed in each case by discounting such rental payments at a rate of 9% per annum compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated to the time of such termination,

(ii) any expenses incurred in the retaking, storage, repairing and lease, sale or other disposition, and reasonable attorneys' fees incurred by Lessor, plus an amount equal to accrued taxes and other amounts payable hereunder by Lessee with respect to the Cars, all costs, expenses, losses and damages incurred or sustained by Lessor by reason of such default, and interest at the rate of 10% per annum on each of the foregoing items in this subparagraph (ii) and on all other sums not paid when due under this Lease; and

(iii) an amount which, after deduction of all taxes required to be paid by Lessor (or the beneficiary under the Trust Agreement) in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the increase in the tax liability of Lessor (or such beneficiary) attributable to the loss or reduction of the Rapid Amortization Deduction (as hereinafter defined) in respect of a Car which is so lost or reduced as a result of the sale or other disposition of Lessor's interest in such Car after the occurrence of an Event of Default.

Anything in this Section 11 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of Lessee which results solely in the loss by Lessor of, or the loss by Lessor of the right to claim, or the disallowance with respect to Lessor of, all or any portion of the amortization deduction with respect to a Car provided for in Section 184 of the Internal Revenue Code of 1954, as amended, or any successor section thereto (herein called the Rapid Amortization Deduction), shall be, for all purposes of this Lease, deemed to be cured if Lessee shall, on or before the next rental payment date after written notice from Lessor of the loss, or the loss of the right to claim, or the disallowance of the Rapid Amortization Deduction in respect of such Car, have been paid to Lessor the supplemental rent in respect of such Car determined as provided in the second paragraph of Section 10 of the Lease.

If on the date of such termination or repossession, any Car is damaged, lost, stolen or destroyed or is subject to any levy, seizure, assignment, application or sale for or by any creditor, Lessee shall also remain liable for payment of the amounts specified in Section 9 hereof.

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. No delay or omission of Lessor in the exercise of any power or remedy given herein shall be deemed a waiver of such power or remedy. In the event that Lessor shall bring suit and be entitled to judgment hereunder, then Lessor shall be entitled to recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

SECTION 12. *Possession and Use of the Cars.* Lessee, so long as it shall not be in default under this Lease, shall be entitled to the possession and use of the Cars. Such possession and use shall be limited (a) to subletting all of the Cars to Sublessee pursuant to the Sublease, or (b) upon the occurrence of an event of default under the Sublease, to resubletting all of the Cars to other users. If Lessee elects to so resublease during the first five (5) years of the Initial Term of this Lease, Lessee agrees that it will use its best efforts to resublet all or as many of the Cars as it can, to other domestic common carriers in such manner as to permit a continuation of amortization under Section 184 of the Internal Revenue Code of 1954, as amended. Such resubletting shall be upon terms and conditions and at rental rates substantially similar to those that would apply to the remainder of the term of the Sublease and upon and subject to all the terms and conditions of the Equipment Trust Agreement and this Lease, and to all rights of the Trustee under the Equipment Trust Agreement and of Lessor hereunder. Upon Lessee's election to resublease the Cars, Lessee shall immediately notify Lessor and Lessor shall have the right, but not

the obligation, during a sixty (60) day period from the date of such notice to resublet for and on behalf of Lessee and on the same terms and conditions as would apply if Lessee had resublet such Cars. During such period Lessor shall use its best efforts so that the term of the Sublease shall continue in full force and effect in order to avoid a constructive termination under Section 184 (e) (6) of the Internal Revenue Code of 1954 or any existing election of amortization under Section 184 (b) of the Code. Any of the Cars not resublet during such sixty (60) day period may be resublet by Lessee to any other user upon terms and conditions and at rental rates acceptable to Lessee and upon and subject to all the terms and conditions of the Equipment Trust Agreement and this Lease, and to all of the rights of the Trustee under the Equipment Trust Agreement and of Lessor hereunder.

SECTION 13. *Assignment.*

(a) All rights, benefits and advantages of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part and/or Lessor may assign, pledge, mortgage, transfer or otherwise dispose of title to the Cars, with or without notice to Lessee. In the event of any such assignment, pledge, mortgage, transfer or other disposition, this Lease and all of Lessee's rights under this Lease, and all rights of any person, firm or corporation who claims or who may hereafter claim any rights under this Lease under or through Lessee, are hereby made subject and subordinate to the terms, covenants and conditions of any chattel mortgages, conditional sale agreements, agreements and assignments, and/or equipment trust agreements (including the Equipment Trust Agreement) covering the Cars or any of them heretofore or hereafter created and entered into by Lessor, its successors or assigns, and to all of the rights of any such chattel mortgagee, assignee, trustee or other holder of the legal title to the Cars. Any assignment or transfer of Lessee's leasehold interest hereunder in the Cars and possession thereof permitted by this Section 13 that is made by Lessee, its successors or assigns, shall contain language which expressly makes such sublease subject to the subordination contained in this Section 13 (a).

(b) Lessee, without the prior written consent of Lessor, shall not sell, assign, transfer or encumber its leasehold interest under this Lease in any of the Cars, except that Lessee may assign and transfer its leasehold interest hereunder in the Cars and the possession thereof as provided in Section 12 and also to any corporation which shall have assumed all of the obligations hereunder of Lessee and into or with which Lessee shall have merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety. No such assignment or transfer shall be made if, after giving effect thereto, any Car would not be deemed to be "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended. No such sale, assignment or transfer made with the permission of Lessor shall relieve the Lessee of its obligation under this Lease. Any assignment prohibited by this Section 13 shall be void.

SECTION 14. *Reports; Right to Inspect the Cars.*

(a) During the continuance of this Lease, Lessee will immediately report to Lessor each accident which causes any damage to the Cars, including but not limited to any accident arising out of the alleged or apparent manufacturing, functioning or operation of any of the Cars. Such report shall contain the time, place and nature of the accident and the damage suffered, the names and addresses of parties involved, persons injured, if any, witnesses and owners of property damaged, if any, and such other information as may be known, and promptly advise Lessor of all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to such accident or charging Lessor with liability. Lessee agrees that it and its agents, employees and representatives will cooperate with Lessor in the investigation and defense of all such claims and that they will aid in the recovery of damages from any third parties responsible therefor.

(b) During the term hereof, Lessee will furnish to Lessor and the Trustee on or before April 1 in each year (commencing with the year 1973) and on such other dates as Lessor or the Trustee may from time to time reasonably request, an accurate report certified by a duly authorized agent of Lessee or officer stating as of a recent date (but,

in the case of each annual statement, not earlier than the preceding December 31 and in the case of any other such statement, not earlier than a date ninety (90) days preceding the date of such statement): (a) (i) the car numbers of the Cars then subject to this Lease, (ii) the car numbers of all Cars that have become worn out, lost, destroyed, irreparably damaged or rendered permanently unfit for use since the date of the previous report (or since the date hereof in the case of the first such report), (iii) the car numbers of all Cars being repaired or awaiting repairs, and (iv) the car numbers of all Cars that have been requisitioned, taken over or nationalized by any governmental authority since the date of the previous report (or since the date hereof in the case of the first such report); (b) that all Cars then subject to the Lease have been maintained in accordance with Section 8(a) hereof or, if such be the case, are then being repaired in accordance with Section 8 hereof, and that the legend placed on the Cars as required by Section 6 hereof and Section 4.06 of the Equipment Trust Agreement has been preserved or repainted on each side of each Car and that the identifying reporting mark and the appropriate car number have been preserved or repainted on each side of each Car as required by those Sections; (c) certifying that no default has occurred and is continuing under the Lease, or specifying all such defaults and the action being taken by the Lessee to remedy the same, and (d) such other information regarding the location, condition and state of repair of the Cars as Lessor or the Trustee may reasonably request.

(c) Lessor and the Trustee shall have the right, at their sole cost and expense, by their authorized agents, employees and/or representatives, to inspect the Cars and Lessee's records with respect thereto, at such times and from time to time during the continuance of this Lease as may be reasonably necessary to confirm to the satisfaction of Lessor and the Trustee the existence and proper maintenance of the Cars; *provided, however*, that notwithstanding any contrary provision hereof, Lessee does not assume liability for injury to, or the death of, any agents, employees and/or representatives of Lessor or the Trustee or other persons while exercising any right under this Section 14(c).

SECTION 15. *Return of Cars.* Upon the expiration of the term of this Lease, or if Lessor shall rightfully demand possession of the Car pursuant to this Lease or otherwise, Lessee shall forthwith remove or cause any lettering of the names or initials or other insignia customarily used by Lessee or Sublessee to be removed from the Cars at its cost and expense and deliver the possession of the Cars to Lessor.

On the termination of this Lease pursuant to its terms (otherwise than pursuant to Section 11 hereof) Lessee shall at its own cost and expense forthwith assemble the Cars and place them upon such storage tracks of Sublessee as Lessor may designate, or in the absence of such designation, as Lessee may select, and Lessor shall be permitted to store said Cars on such tracks at the expense of Lessee for a period not exceeding one hundred (100) days from the date that all Cars are so assembled at the risk of Lessor, and Lessee shall cause at Lessee's expense the Cars, or any thereof, to be transported or cause to be transported, at any time within such one hundred (100) day period, to any place or places on the lines of railroad operated by Sublessee or to any connecting carrier for shipment, all as directed by Lessor.

If the Lessor shall rightfully demand possession of the Cars pursuant to Section 11 hereof, the Lessee shall at its own cost and expense forthwith assemble the Cars and place them upon such storage tracks as Lessor may reasonably request (or, if Lessor and Lessee agree, upon such storage tracks of Sublessee) as Lessor may designate, or in the absence of such designation, as Lessee may select, and Lessor shall be permitted to store said Cars at the expense of Lessee on such tracks at the risk of Lessee until the Cars have been sold, leased or otherwise disposed of by Lessor and Lessee shall at Lessee's expense cause the Cars to be transported to any connecting carrier for shipment if so directed by Lessor.

The assembling, delivery, storage and transporting of the Cars as hereinabove provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee so as to assemble, deliver, store and transport the Cars.

Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 15, Lessee hereby irrevocably appoint Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obliged to deliver possession of any Car to Lessor, to demand and take possession of such Car in the name and behalf of Lessee from whomsoever shall be at the time in possession of such Car.

Except as otherwise provided in Section 9 hereof, in the event that any Car or Cars subject to this Lease are not redelivered to Lessor on or before the date on which the term of this Lease expires, all of the obligations of Lessee under this Lease with respect to such Car or Cars shall remain in full force and effect until such Car or Cars are redelivered to Lessor.

SECTION 16. *Purchase Options.* Provided that this Lease has not been earlier terminated and Lessee is not in default hereunder, Lessee may by written notice delivered to Lessor not less than six months prior to the end of the Initial Term, the First Extended Term or the Second Extended Term of this Lease, elect to purchase all of the Cars covered by this Lease at the end of such term or extension of this Lease for a purchase price equal to the Fair Market Value of such Cars as of the end of such term or extension.

If on or before four months prior to the extension of the term of this Lease or any extension thereof, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value of the Cars, the Fair Market Value shall be determined by an appraiser or appraisers under the same procedures as are set forth in Section 3 hereof.

Fair Market Value shall mean at any time for the determination thereof an amount determined on the basis of, and equal to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

SECTION 17. *Modification of Lease.* This Lease exclusively and completely states the rights of Manufacturer, Lessor and Lessee with respect to the Cars. No modification, variation, termination, discharge or abandonment hereof and no waiver of any of the provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of Lessor and Lessee, or the successors, transferees or assigns of either, subject, however, to the limitations on assignment hereof by Lessee. No such variation, termination, discharge or abandonment shall affect the rights and duties of Manufacturer, unless signed by a duly authorized officer of Manufacturer.

SECTION 18. *Section Headings and Certain Preferences.* All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease. Unless otherwise indicated, all references herein to sections, subsections, clauses and other subdivisions refer to the corresponding sections, subsections, clauses and other subdivisions of this Lease; the words "herein", "hereof", "hereby", "hereto", "hereunder", and words of similar import refer to this Lease as a whole and not to any particular section, subsection, clause or other subdivision hereof; and reference to a numbered or lettered subdivision of a section shall include relevant matter within the section which is applicable to but not within such numbered or lettered subdivision.

SECTION 19. *Certain Applicable Laws.* Any provision hereof prohibited by or unlawful or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without modifying the remaining provisions of this Lease. Where, however, the provisions of any such applicable law may be waived, they are hereby waived by Lessee to the full extent permitted by law, to the end that this Lease shall be deemed to be a valid, binding agreement enforceable in accordance with its terms.

SECTION 20. *360-Day Year.* Computations hereunder involving the determination of interest or discount shall be made on the basis of a 360-day year of twelve 30-day months.

SECTION 21. *Notices.* All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or delivered to a United States post office, first-class postage prepaid, or to a telegraph office, charges prepaid, addressed as follows:

If to Lessor:

First Western Bank and Trust Company
235 Montgomery Street
San Francisco, California 94104
Attention: Edgar Canfield,
Vice President and
Trust officer

(with a copy to The Northern Trust Company, 50 South La Salle Street, Chicago, Illinois 60690, *attention of* Richard W. Resseguie, Vice President, Banking Division II)

If to Lessee:

Pullman Incorporated
200 South Michigan Avenue
Chicago, Illinois 60604
Attention: Legal Department

or to such other addresses as may hereafter be furnished in writing by either party to the other.

SECTION 22. *Governing Law.* The provisions of this Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 23. *Survival of Covenants.* Any other provisions contained in this Lease to the contrary notwithstanding, it is hereby agreed that the provisions of Sections 7, 10, 11, 13 and 15 hereof shall survive the expiration or termination hereof.

SECTION 24. *Successors and Assigns.* Subject to the provisions of Section 13, this Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns, and no other persons shall have or acquire any right under or by virtue of this Lease.

SECTION 25. *Execution in Counterparts.* This Lease may be executed simultaneously in several counterparts, each of which so executed shall be deemed to be an original, and all such counterparts together shall constitute but one and the same instrument.

SECTION 26. *Recording.* Lessee, without expense to Lessor, will cause the Equipment Trust Agreement, this Lease and all amendments, supplements and assignments hereof or thereof, to be duly filed and recorded and re-filed and re-recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited with the Registrar General of Canada in accordance with Section 148 of the Railway Act (a notice of such deposit to be given in the "Canada Gazette" pursuant to said Section 148). Lessee will promptly furnish to Lessor and Trustee certificates or other evidences of such filing and recording and re-filing and re-recording and an opinion satisfactory to Lessor of counsel for Lessee, or an attorney designated by him satisfactory to Lessor, with respect thereto. In addition, Lessee shall do and perform all such other acts as may be required by law, or reasonably requested by Lessor, for the protection of Lessor's title to and Trustee's interest in the Cars.

SECTION 27. *No Recourse.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of Lessor or Lessee, or assignee or assignees or transferee or transferees of Lessor, or against any beneficiary or beneficiaries of director, officer or beneficiary, whether by virtue of any constitutional by reason of the fact that such person is an incorporator, stockholder, Lessor under the Trust Agreement (disclosed or undisclosed), solely

provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease to be executed in its respective corporate names, by one of its officers thereunto duly authorized, and its respective corporate seal to be hereunto affixed and duly attested, and all as of the day and year first above written.

FIRST WESTERN BANK AND TRUST
COMPANY, as Owner-Trustee,

By
*Vice President and
Trust Officer.*

ATTEST:

.....
Assistant Secretary.

PULLMAN INCORPORATED,

By
Vice President.

ATTEST:

.....
Assistant Secretary.

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this day of July, 1971, before me personally appeared , to me personally known, who, being by me duly sworn, said that he is a Vice President and Trust Officer of First Western Bank and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

My commission expires

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this day of July, 1971, before me personally appeared , to me personally known, who, being by me duly sworn, said that he is a Vice President of Pullman Incorporated, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[NOTARIAL SEAL]

Notary Public

My commission expires

EXHIBIT A

Group	Description of Cars	Number of Cars	Specifications	Cost Per Car	Monthly Rental for first 40 months of Initial Term	Monthly Rental for subsequent 140 months of Initial Term	Monthly Rental for First Extended Term
1.	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with gravity gate unloading and lined	1,000 Numbered PCB 888749 through 889748, both inclusive	Manufacturer's Specifications	\$17,925.00	\$113.52	\$181.81	\$45.46
2.	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with gravity gate unloading and unlined	200 Numbered PCB 889749 through 889948, both inclusive	Manufacturer's Specifications	17,250.00	109.25	174.98	43.75
3.	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with pneumatic unloading and lined	51 Numbered PCB 889949 through 889999, both inclusive	Manufacturer's Specifications	18,400.00	116.53	186.65	46.67